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A P P E A L

TO THE PUBLIC;

STATING AND CONSIDERING

THE OBJECTIONS TO THE

QUEBEC BILL.

INSCRIBED AND DEDICATED

TO THE PATRIOTIC SOCIETY OF THE

BILL OF RIGHTS.

— VOS ERITIS JUDICES,
LAUDINE AN VITIO DUCI FACTUM ID OPORTEAT.
TER.

VULTIS EXEMPLO MAJORUM AUGERE REM RO-
MANAM VICTOS IN CIVITATEM ACCIPIENDO? MA-
TERIA CRESCENDI PER SUMMAM GLORIAM SUPPE-
DITAT. CERTE ID FIRMISSIMUM LONGE IMPERIUM
EST, QUO OBEDIENTES GAUDENT.

TIT. LIV.

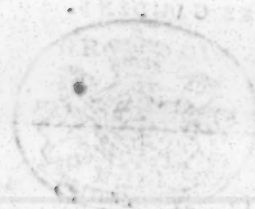
L O N D O N:

Sold by T. PAYNE, Meuse-gate; and M. HINGESTON,
in the Strand, near Temple-bar.

MDCCCLXXIV.

REPORT
TO THE PUBLIC
OF THE
COMMISSIONERS TO THE
QUINCY HILL

THE
REPORT
OF THE
COMMISSIONERS
TO THE
QUINCY HILL
FOR THE
YEAR
1880



DEDICATION.

TO THE

Patriotic Society of the BILL of RIGHTS.

MAY IT PLEASE YOUR HONOURS!

EMotions of respect and esteem the most disinterested, joined to the sincerest wishes for the welfare of your illustrious Body, are my sole incitements to inscribe this APPEAL to you. It contains the substance of a Speech, which I had prepared for the third reading of the QUEBEC BILL; but in which I was prevented rising, by the House illegally refusing to admit me into their corrupt walls, unless I could prove * myself duly qualified, and elected to a seat there.

* I offered to leave it to your arbitration, or that of the Livery; but was refused, upon the ground of that odious Doctrine, that the Parliament is free, and accountable to none; no, not even to the Livery.

vi DEDICATION.

This I cannot do, and therefore must appeal, as is most meet, to your Mobility; beseeching you to permit me humbly to lay my labours at your feet; and, at the same time, to assure you, that though hitherto a silent spectator, yet, not without real satisfaction, have I beheld from my garret the remonstrating Processions, the riotous and free assemblies, and the perfect Liberty which has prevailed in the public streets, since you have assumed the government of this Metropolis. The active part which you have taken in this Bill, by setting the Lord-mayor, Aldermen, and Mob, upon his Majesty; and your support of the Arch Patriot, continued at a time, when no one else would have supported him, will never be equalled—will never be forgotten. To you alone it was left to stand forth in behalf of a man, whom in bad times, or in bad states, the public voice would have consigned to punishment—to infamy.

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D E D I C A T I O N. vii

But the day * would not suffice to enumerate your various attempts in favour of Liberty; nor would my pen be equal to the task. Permit me, then, to turn your attention to myself, and to dilate on my claims to your favour and patronage. Truly can I recommend myself to you as a man—who have spent the little I set out with—who am bred to no business or profession—who have no dealings in the city—nor property in this or any county—who have been shamefully refused several little places, which I had condescended, at different times, to solicit under Government—and who, lastly, want only a Catiline to lead me to attempt the most candid and free measures which Liberty can direct.

Thus qualified, I humbly beg you, to direct the Livery of London freely to elect me one of their Sheriffs for the next year, in conjunction with

* Si prima repetens ab origine pergam,
Ante diem clauso componat vesper Olympo.

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viii DEDICATION.

some Alderman, who may keep our joint purse. I likewise presume upon another favour, of no possible honour, though perhaps of profit—your issuing your *Congé d'Elire* to your subjects at Brentford, to chuse me one of the Knights of the Shire, to represent the Freeholders of Middlesex in the ensuing Parliament.

So raised—so created by you from nothing, you may depend upon my Gratitude, Liberty, and Honour, engaging me to adopt, support, and avow, the worst and most dangerous measures which you can direct; and that, in imitation of my predecessors, I shall continue such grateful, free, and honourable conduct, so long as I find it my interest so to do.

A SPEECH

A

S P E E C H

UPON THE

QUEBEC BILL.

Mr. SPEAKER!

SIR,

HAD it not been the object of the opposers of the Bill, now under our consideration, to render odious and invidious its general principles, I should not have thought it needful for me, rising in a parliamentary debate, to premise, that, besides its peculiar expediency, a clear conviction of the *liberality* and *polity* of its principles is my chief inducement,—my leading motive, to rise and endeavour to oppose the popular *prejudices* which we have seen

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so potently to militate against this Bill, both with those who through ignorance have misunderstood it, or through malevolence have misrepresented it.

It is a little remarkable, that these popular prejudices, among other incompetent foundations, rest upon a doubt of the power of *Parliament* * to model and constitute its Colonies in such a manner as shall be deemed meet: they make a question, whether the *Supreme Legislature* of the *British Empire* has a right to give, to its ceded Province of *Canada*, such form of government, and such toleration of religious professions, as shall appear fitting for the *imperial* state to give, and for the *dependent* state to receive.

* The jurisdiction of this Court, says Sir Edward Coke, is so transcendent, that it maketh, enlargeth, diminisheth, repealeth, and reviveth, laws, statutes, acts, and ordinances, concerning matters ecclesiastical, capital, criminal, &c. 1 Inst. fol. 110.

I could

It seems to me, that this is a very unconstitutional and illiberal ground, on which to support an argument, nominally in favour of Liberty.

But, when it appeared to be the intention to embarrass us with *verbal* disputes, addressed to our passions and prejudices, instead of our reason, in order to “darken counsel by words without knowledge;” I thought myself in duty bounden to examine *the Bill itself*, and see with my own eyes, whether it warranted the inductions drawn therefrom. I shall therefore presume to trespass upon your patience, Sir, and upon that of this honourable Assembly; while I recapitulate the heads of the Bill in contemplation, and mention some few observations which occurred to me, upon the perusal of it.

The preamble of this Bill having stated, that, by the Proclamation in

1763, a large extent of country, containing *Canadian* possessions, was left without any Civil Establishment; and that other parts of the *Canadian* fishery (the *Labradore* coast) were thereby subjected to the regulations of *Newfoundland*, which were inconsistent with the nature of their fishery; the act then goes on to place under the jurisdiction of this new government all unappropriated lands, southward as far as where the *Ohio* runs into the *Mississippi*, and northward to the territory of *Hudson's Bay*; revoking the aforesaid Proclamation. It then grants a *toleration* of the exercise of their religion, *subject to the King's Supremacy*, to the *Roman Catholics* there, and (after a clause in favour and encouragement of the *Protestant* religion there) prescribes a form for their Oath of Allegiance.

The Act then goes on to secure to the Canadians their *possessions, customs, and usages*; and (except in the case of lands held under English tenures, which are to remain as they are) continues

tinues to them their own *laws*, so far as they relate to *property* and *civil rights*: but, in this provision, the property and possession of the *religious communities* are excepted; and the whole system remains subject to alterations, by ordinance of the Legislative Council, whenever the Canadians shall be satisfied, of the superior excellence, of the *English* civil law, or the objections, which prevent its establishment there, shall cease; or whenever the administration of Justice, under *Canadian* law, shall become oppressive to British subjects, having property and credits there. The Act then gives them the power of devising by Will. It gives them that best part of our constitution, *the Criminal Law of England*. It then proceeds to state the inapplicability, to their situation, of an assembly of representatives; and authorises the King to nominate a Governor and Council, who are to have a power of making ordinances for their peace, welfare, and good government, but *not* for the pur-

pose of *taxation*. It further enacts, that no ordinance touching religion, or that inflicts greater punishment than fine or imprisonment for three months, shall be of any force or validity, until approved by the Crown. It then concludes with three clauses, relating to the manner of passing these ordinances, to the power in the Crown of erecting courts, and to enforcing in that Province the acts of parliament for regulating the Plantation trade.

Having briefly stated what the Act *does* give them, it may not be amiss cursorily to mention what it *does not* give them. It does not give them all the inexplicable reasoning and machinery of our law.—It embarrasses them neither with the uncertainty of contingent remainders, nor with the mousetraps of special pleading.—It does not oblige them to carry attornies from hence to manage their estates.—It does not subject them to the cruelty and severity of our laws concerning arrests.—It does
not

not enable four hundred emigrants, because they are Protestants, to erect themselves into a constitutional *aristocracy*, and tyrannize over and oppress above an hundred thousand peaceable and dutiful subjects, who first settled the country; men of property, of rank, of character.—It does not, in infraction of the very *treaty* which ceded the country to us, compel these mistaken, yet believing, Christians to sacrifice the prejudices, the faith, the religion, they were born in, at the shrine of a superstitious and intolerant hierarchy.—It does not empower the few Protestant settlers there, under the idea of a *free representation*, to *tax* at discretion a country, of which they form a most insignificant part; but reserves *taxation*, where it should constitutionally remain, in the breast of this house.—Neither does this Act, Sir, authorize a * Committee, to take a sum of money out of the revenue, granted to the

* See some late transactions in Carolina.

Crown for the uses of government, and send it over to *the Bill of Rights*, to be expended in hiring a mob, to insult the first magistrate of this country, in his *public* character.

But I am yet to learn that the omission of these properties, in their constitution, precludes either *polity* or *liberty*; or that the restoring and assuring to the conquered their possessions, rights, laws, and religion, is an act of severity or of tyranny in the conqueror; especially when we consider, that this bill restores *partially* what, by a mere temporary expedient, the King's Proclamation * *incompetently* (as

* I should thus defend my opinion.—In Salkeld 411 it is laid down, by Lord Chief-justice Holt, “that, in a conquered country, the laws of the conquering state cannot take place till declared so by the conqueror and his successors:” which conqueror is the supreme power of the conquering state; with us, the King in concurrence with the two Houses of Parliament: for it is clear, that our King acting singly is not that Sovereign which Vattel describes, vol. I. Sect. 47, and 235, who

(as I deem) took away. For the King has not, I conceive, Sir, a power of

who "can change such laws as are not fundamental, and make political regulations," which with us are acts of Legislation. This is further elucidated by the argument in Calvin's case, 7th Rep. where the reason given, why "the King may, at "pleasure, alter the laws of a conquered country," is, that "he hath *vitæ et necis potestatem*, the "power of life and death." He may, perhaps, have *vitæ et necis potestatem* so long as the state of war continues; but such a power, after returning the sword to the scabbard, is repudiated by all nations of the world. L'Espr. des Loix, l. xv. c. 2. Besides, a conquest is for the benefit of the state, not of the King. See Vattel, vol. II. sect. 232. And, if there was such a power, it would vest in the Parliament; for it cannot be either an executive or judicial act, which are supposed to be in consequence of some municipal law, pre-existent and prescriptive to them. There seems to me to be a strong line between ordinances made in a conquered country in time of war, and those made in time of peace: in war, they are temporary regulations, made upon the spur of the occasion; in peace, they are durable establishments. I must acknowledge my obligations to Mr. Macdonald's able argument, in the King's-bench, last Easter term, for the clue which has led me so far as I have been able to enter into this point.

annulling

annulling or altering the laws of a conquered country, unless *flagrante bello*, while the sword of war remains unsheathed; for, after hostilities have ceased, such alteration is an act of *Legislation*.

And even if there was so ample a power vested in the Crown, yet the exertion of it, in the manner which has been proposed, by giving them a new system of law, would be *unnecessary*, and consequently *impolitic* and *tyrannical*; for the wanton and unnecessary imposition of laws and regulations is, according to * Blackstone's idea, destructive of *liberty*; and, in my mind, of *polity* also. The change, which William the First made in our laws and language, shewed in its consequences as much ill polity, as injustice in its principles: for it is truly said, by the † author of the Spirit of Laws, that “ it is the folly of con-

* Book I. ch. 1.

† Grand. et Decl. des Romains, ch. vi.

“querors to wish to give to every
 “people their own laws and customs;
 “which are of no use, for in every
 “species of government the subject is
 “capable of obedience.” That it is
 not necessary for us to give our con-
 quered states our own laws, we have
 proof in the examples of *Guernsey*,
Jersey, *Minorca*, &c.; which retain
 their obedience as well under their own
 laws, as they would under ours.

Far am I, Sir, from being convinced
 of the expediency, or justice, of sub-
 mitting the *lives, liberties, and pro-*
erties, of our subjects in Canada to
 the jurisdiction of the very few British
 Protestants settled there; who, I am
 bold to assert, are some of them the
 very refuse of this country, who have
 unsuccessfully ventured to other parts
 of America previously to their colo-
 nizing in Canada. Were it declared
 expedient and just, I should not won-
 der, if these poor Roman Catholic Ca-
 nadians, vainly guarded by the articles
 of

of treaty, should petition us for a larger number of Protestant transports than has been used to be sent there, in order to increase the number of *proper* and *fit* men to form their House of Commons, who shall give them *laws*; and to compose a body from whence to chuse their *special and common juries*, who are to determine on *life and property*.

To those who contend that, when in the * Treaty we contract to take the most effectual measures to tolerate in them the exercise of their religion, “as far as our laws will permit,” we do

* The words of the Treaty referred to are these:
 “That his Britannic Majesty, on his side, agrees
 “to grant the liberty of the Catholic religion to
 “the inhabitants of Canada. He will consequently
 “give the most precise and most effectual orders,
 “that his new Roman Catholic subjects may prosecute the worship of their religion, according to
 “the rites of the Romish Church, as far as the
 “laws of Great-Britain permit;” that is, *subject to the King’s Supremacy.*

not

not mean any thing; * for that our laws do not *permit*, but only *wink* at, the exercise of the Roman Catholic worship here: that our Roman Catholic laws are like a sword in a scabbard, which drawn, gives a *libera et infinita potestas* to him who bears it. To this I shall content myself with answering generally, that, if treaties are to be so construed, it will in its consequences render vain *the Law of Nations and Treaties*, which has hitherto operated, so much to the honour and peace of Modern Europe.

If any man, after having read the *petition* from whence this bill originates, signed

* Our Law judges more liberally of constructions, when it directs, that “an engagement shall operate most forcibly against the contractor;” and that every word shall take effect, if possible.” Plowden, 156.

† This petition of the Canadians, having mentioned the conquest, and the consequent treaty which restored to them their religion, laws, and possessions, represents the inconvenience and confusion

signed by most of the respectable names of Quebec, desiring, so far as may be,

fusion which have attended the since changing of their own laws for the English laws, with which they were totally unacquainted, and which were not in any way suitable to their situation. Having then thanked his Majesty for admitting them to sit upon juries, they profess their surprize at being told, that they could not be in any employ civil or military, as they had flattered themselves that their irreproachable and dutiful conduct, since the conquest, would be such a testimony in their favour, as might induce their Sovereign to admit them to the rights of British subjects. They then beg their laws to be restored to them; and the Upper Country, and the coast of Labradore, to be replaced under the jurisdiction of their Province.

The Counter-petition of the British Traders there does not say a word about the treaty, or about the inhabitants of the country; but, having cited the proclamation, and shewn the gloriousness of forcing the British laws and constitution upon the conquered Canadians, and asserted that the petitioners are very industrious (which I believe true enough), and carry on a great part of the trade of the place, concludes by informing his Majesty, that there are now (which I doubt) a sufficient number of Protestants to form a General Assembly, and that they therefore hope that one will be immediately called.

their

their laws continued, and their religion tolerated; and having compared it with the *counter-petition* for the laws of *England*, signed by the *British* Traders there, who, reinforced by all their party, are in a less proportion to the Roman Catholics of Quebec than *one* to *two hundred*; if, so informed, he shall assert that it is the *desire* of our *colony* of Quebec to forego their own laws, in exchange for ours: to an assertion so void of truth I shall not waste words in replying, but content myself with answering, in the modest and humble phrase of an honest saint, whose name I forget, *Mentiris impudentissimè!*

But it has been said, that not merely the *interest* of our Canadian subjects, nor yet the *sacred faith* due to treaties, is to be consulted; that we must take heed to the danger of introducing despotism into our constitution, by letting the infection touch even the extremes. But, Sir, so far as *precept* and *example* united can support me, I shall venture
to

to demur to this principle; not to the extent of the words in which it has been expressed, but to such state of it as the fact will warrant. Far be it from me to assert that *despotism* is proper for any part of a *free* Empire; but I trust that I am warranted in saying, that, if the constitution of the *dependent* state cannot exactly tally with that of the *imperial* state, it had better be *less* free than *more* free.

The constituting of a dependent state exactly as free, and yet not more free than the imperial state, is, in my sentiment, quite Utopian. I believe that there never was an example of this exact tally: I am confident in asserting that there is no such example in our Empire. Our royal governments are *less* free, our charter governments are *more* free, than the mother-state: our brethren in *New England* have been *abundantly* more free; so that we have feared lest they should “use their liberty as a cloak to licentiousness.”

"tiousness." As proof thereof, call to mind, Sir, what little effect the patriotic Mayors and Aldermen of the city of London have had in raising sedition in the cause of Liberty, compared with the eager strides of the "*Sons and Daughters of Liberty*" at Boston to that system which knows no sovereign power but in Heaven.

You will recollect, Sir, that the states of *Greece* had all dependent states, with more confined liberties than their own. Montesquieu * remarks of *Rome*, that their Republican constitution could *not* be communicated to the Provinces; that, while *Liberty* was in the center, *Tyranny* was in the extremes; for, he then adds, a *Monarchial* constitution may be communicated to a dependent state, but a *Republican* cannot. In a subsequent † book however he makes a partial exception to his observation, in favour of the *Mixt Consti-*

* L'Esprit des Loix, Liv. xi. Chap. 19.

† Liv. xix. Chap. 27.

tution of England; saying, that, where the English send out colonies of *their own People*, they can communicate their system: but, he adds, not when they conquer; for there, though *the citizens* of the state may be made *free*, yet their *constitution* must be *dependent* and *monarchial*. To know whether this applies, we have but to determine, whether the hundred thousand *conquered* Canadians, or the four hundred *colonizing* English, compose the Province of Quebec. If the first, it is a conquered country; if the latter, a settled Colony.

The few Republics which now exist concur to add authority to my assertion; but in no instance that occurs to me is it more justified than in the manner in which the *Republic* of *Holland* governs its *monarchial* establishment at *Batavia*. “ * A simple merchant, governor of that Colony, appearing there with all the state of the

* *Siecle de Louis XIV. Tom. I. p. 21.*

“ greatest

“greatest Kings, without their suffering this *Asiatic* Pomp to corrupt the simplicity of their European Dutch,” draws from Voltaire the observation, that “this mode of *external* pomp and *domestic* frugality has formed the grandeur of the Seven Provinces.”

But the manners of the *European* Dutch are as much more simple and frugal than *ours*, as the pomp of the *Batavian* Dutch exceeds what is, or can be, in *Canada*. The Republic of Holland is as much more republican, and less monarchical, than the Mixt State of England; as the despotic Viceroy of *Batavia* is more absolute, than the Governor of *Quebec* under the proposed qualified establishment. The case is much stronger, and yet has produced none but good effects.—

Having said thus much, in order to state the *General Polity* of the Bill, its *peculiar necessity* and *expediency* in this instance,

instance, and that *no danger* to us attends it; I proceed to examine, whether its operations will be in favour or in opposition to *Liberty*. And in a Free State like this, to which we have the happiness to belong, it is not to be wondered, if the sound of that single word, "*Liberty*," should be equal to an army of other words; for arguments in favour of Liberty are, and ought to be, heard with avidity in this assembly;—they merit and they receive favour in our courts of Law.—And, Sir, did I conceive the Arguments for this Bill to have effect in favour of the *Prerogative* of the Crown, and against the *Liberty* of the subject, I would be the last man in this house who should rise to support it. But when I shall have observed to you, that, *without* this Bill, the Government of Canada will remain formed of a Governor, Council, and House of Assembly, electable out of and by the *very few* Protestants who reside there, to the exclusion

clusion of, generally speaking, *all* the Canadians ; that this *Oligarchy* is to be armed with the power of *tyranny* and *persecution* ; and that this constitution is to remain solely established by the King's *Proclamation*, and wholly subject to his prerogative:—and when, on the reverse of the medal, we find that *this* Bill considers them as subjects, not of the Royal *Prerogative*, but of the *Legislature* of the British Empire ; and as such admits them to the rights of subjects, and to a small participation of Government ; that it tolerates their religious prejudices, and continues to them their own Laws and Tenures, so far as they concur with their advantage and our safety:—It will then be easy for this assembly to determine, Sir, which of the two is *a conquest to Liberty* ; that which founds an *aristocratic hierarchy* on *kingly prerogative* ; or that which *constitutionally* admits the conquered to *the rights of British subjects*, so far as their situation will permit.

Can there be any thing more invidious—more odious—more averſe, to Liberty, than a ſystem which draws a line between *ſettling* ſubjects and ſubjects *by treaty*; which conſiders emigrants from England as authorized to exerciſe all the tyranny, which *Roman* Citizens were guilty of in their Provinces; and treats a country, ſubjected to us by treaty, as a province acquired for the purpoſe of their oppreſſions. It would be ridiculous, Sir, to think that * *eo loco, ubi ſervitutem eſſe velimus, fidem ſperandam eſſe.*

But ſuch the miſtake muſt be, which enſues our being governed by *words*, inſtead of *ideas*. This very diſtinction between conquered and ſettling ſubjects, which patriots have contended ſo for in this inſtance, was, by being realized in the *Roman Provinces*, the cauſe of all thoſe ſhocking ſcenes of

* Ridiculous to think, that, “in that place
“where we have conſtituted ſlavery, fidelity is to
“be hoped for.”

oppreſſion

oppression and tyranny, which emigrants * from that city displayed amid their unhappy subjects; the which, by a necessary consequence, drew after them the *slavery*, and ultimately the *ruin*†, of that imperial city, whose constitution had been the vaunted produce of six hundred years. The instance is the more remarkable, in that this very Empire, which thus fell a sacrifice to its own injustice and bad polity, originated its grandeur by directly *opposite* measures‡,—those of incorporating into its own body every city and state of Italy which it conquered.

If it should appear, that, by the extension of our *Criminal Law* to that

* See the end of Mithridates's speech, cited from Trogus Pompeius by Justin, I. lib. xxxvii. cap. 7.

† Ego cuncta imperia crudelia, magis acerba, quam diuturna, arbitror; neque quemquam a multis metuendum esse, quin ad eum ex multis formido recidat. SALLUST, Orat. I.

‡ Tit, Liv, lib. VIII. cap. xiii. Camillus's speech.

country, the writ of *habeas corpus* in criminal matters is *ipso facto* carried with it, and equally * issuable in the courts

* The first and leading point in the construction of an Act of Parliament is to make it so operate, as to suppress (so far as may be) the mischief, and advance the remedy. 1 Comment, 87. And it is the master-principle of our Law, that every thing in favour of Liberty shall be liberally and beneficially expounded. The *habeas corpus ad subjiciendum*, which issues in criminal cases, and that *ad deliberandum et recipiendum*, to remove criminals, are a part of our criminal law, and a part essential to the liberty of the subject : and though it is provided, in the *habeas corpus* act, that it shall be issuable only by the Lord Chancellor and the twelve judges ; yet, because that if, in criminal cases, it should not be issuable in the same manner in Quebec as in the other Colonies, the part of the act, which gives them the Criminal Law of England, would lose its principal aim and effect ; therefore it is to be understood, that the part of the *habeas corpus* act, which restrains the issuing of this writ to the Lord Chancellor and the twelve Judges, is, so far as it applies to Quebec in criminal matters, virtually repealed ; for, otherwise, the intention of this Act, to put them upon the same footing with ourselves in point of criminal jurisprudence, cannot take effect. It is a little extraordinary, that this Act, which has given such offence

courts *there*, as in England: if it should likewise appear, that the extension of this same criminal Law operates to secure to them the *trial by Jury* in all matters which concern either the *Life* or *Liberty* of the subject, in all matters in which the power and prerogative of the Crown might, by *possibility*, gain an opportunity of interfering to the oppression of the subject; and that their former mode of trial only remains, in civil actions, between *subject* and *subject*, and in disputes about a property which is held under different tenures from ours; and that only till the Legislative Council, with approbation from home, shall find it expedient to *alter* it:—If all this should ap-

offence on account of its supposed exclusion of this writ, is the only act which extends it to any Province in America. The other Colonies have it, through Governors Instructions, under a very liberal construction of the 3rd of Charles II. I understand that a very great Lawyer has given his opinion, that this writ is, in criminal matters, issuable by the Judges of the Superior Court of that Province, equally as in England.

pear,

pear, and in the face of the Bill we may read it, I humbly conceive, Sir, that all arguments, issuing from the idea of the *non-extension* of the writ of *habeas corpus*, and trial by jury, to this colony are, to use a justly favourite expression "meer, Moon-shine."

Could it happen (which Heaven forbid!) that the sovereign of some neighbouring state to us, advantaged by situation, connections, events, and good Fortune, should acquire by *conquest* the sovereignty of this Kingdom, to the exclusion of the present family, who came to the throne, to *assert* and *support* the rights of *Britons*: should this happen (and, however distant in event, in argument it may be supposed), and should this conquering Prince think proper to *declare void* our laws, usages, tenures, and Doctrine of Descents; our Privilege of trial by jury, our claim to the writ of *habeas corpus*, our rights of manors, and our possessions,

possessions, in order to constitute the whole system *de novo*; and should he close this deadly edict by prohibiting us to worship the God of our Fathers, as our Fathers worshiped him;—what names! what words should we think sufficiently emphatical for such an Act of Tyranny! But if, to the cruelty and injustice of such a procedure, it should appear in accession, that it was * *unnecessary, wanton, and impolitic*, the folly of the deed would demand still stronger words to express its character.

Let us then put ourselves, for a moment, in the situation of our conquered Canadian subjects. To them *their* laws, *their* usages, *their* rights, *their* possessions, are equally dear as *ours* are

* For the reason of two or three hundred stragglers of the conquering nation, having crept in among us, would, in our own case, be deemed nothing better than a man of straw; and that is not reason, in the case of another, which is not so in our own instance.

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to us: *their* religion is much dearer, through a mistaken *zeal*, which unhappily misleads them. Can we, by any means, conceive ourselves authorized to correct these errors by *persecution*? or will the Spirit of *our Faith* warrant us by *fire* and *faggot* to make *immediate* * Profelytes of an hundred thousand subjects, whom the chance of war, and the faith of treaties, have placed under our jurisdiction? Surely, not. For let no man say that we have a right of compulsion, because *our* laws and religion are better than *theirs*. The assertion may be very true; but, if admitted as an argument, it is an argument, which the veriest tyrant upon earth, operating for the worst of purposes, might equally with us make use of.—

So far, Sir, for the *Polity, Liberty,* and *Propriety*, which, in my sentiment

* The history of every country affords convictive proof, that persecution is not the proper means of converting from religious errors,

at

at least, unitedly direct the *aim* and *operation* of this Bill. I have now to engage your view, to that part of it, which prescribes the *extension* and *limits* of this new Province; a subject which has been more spoke to by the gentlemen in opposition, because more capable of a multiplicity of words. The Bill, Sir, re-annexes to Quebec, on the one side, the *Labradore* coast, and, on the other side, the *upper* and *interior* country of North-America, North of the Ohio; and as the reasoning applying to these two countries depends upon different facts, I must beg your indulgence, while I speak to each of them separately; and first with regard to the *Labradore* coast.

It is impossible for any man, who is acquainted with the nature of the *commerce* and *fishery* carried on upon that coast, and with the state of the Canadian claims there, not to see that the
restriction

restriction of it to the government of Quebec, in exclusion of the government of Newfoundland, is an act both of *expediency* and *justice*. The *Seal* and *Sea-cow* fisheries of *Labradore*, and the *Cod* fishery of Newfoundland, are so different in their natures, that the same mode of regulation cannot be applicable to both. The first comer every spring to Newfoundland seizes upon, and becomes tenant by occupation of those unoccupied parts of the shore which are most convenient and suitable to him: there is no *perennial* property in the fishery; but they are all *annual* occupants; for the boat, which carries them there, carries with them their barrel of rum, and barrel of pork, and the other few requisites for a *complete* establishment of their fishery. But the *Labradore* fisheries are carried on upon a very different principle, and in a very different manner: they are *fixed* and *sedentary*, and re-

quire more than mere annual establishments; and the *profit* would be irresponsible to the *expence*, if the fisherman, after a large disbursement in preparations and means for carrying on his fishery this year, is to be ousted and deprived of the benefit of them the second year; and is to be obliged to recur to the same expence annually for the same inadequate profit.

It is true, that the Proclamation, by making it a part of Newfoundland, did not *absolutely* prescribe, that it should, in all its parts, be subject to the regulations of the Newfoundland fishery; but, by the mistaken zeal of those gentlemen, who have been appointed to superintend that fishery, it has in fact had, and must continue to have, these consequences; for, however wise and proper *their* regulations may have been, when applied to those parts of the coast, where a *Cod* fishery may be carried on; yet
they,

they are certainly inapplicable to the *Oil* fishery; and, by making it impossible for a Canadian to form establishments, where he has a *right* to possession, do in fact violate every principle of *Law* and *Justice**.

If then it should be deemed impolitic to subject that valuable coast and fishery to the system which operates half the year in Newfoundland; it will, I trust, appear an indispensable point of *polity* to subject them to some government or other. To establish a government on purpose is a needless and absurd expence; and *St. John's* will want more maturity and population before it will be fit to govern itself. *Halifax* is also yet in its infancy, and equally incapable of enlarging its dependent jurisdiction. *Quebec* will then appear

* Sir Hugh Palliser has had, and, I believe, now has, actions pending against him here, on account of some of these regulations.

to be the * *only* Province adapted by *situation* and *condition* to this task. And the fishermen of Labradore will certainly not change for the worse, in escaping from the jurisdiction of a *Commodore* to the civil Establishment of a *Governor and Council*, acting under laws to be consented to here; which will surely be better for them, than a system, whereof the *quod placuit principi*, the Commodore's high will and pleasure, forms the *code*.

It is true, that there is a very valuable *cod-fishery*, on some parts of this coast, which may be carried on by British subjects. But is there any thing in this Act which *prevents* British subjects from fishing upon those parts of the coast, where there are no Canadian settlements? Is there any thing in this Act which disables the

* Quebec, Halifax, and St. John's, are the only neighbouring Provinces to the Labradore Coast.

D

King

King from giving instructions for measures that may *secure* that fishery to British subjects? Is it to be supposed, that the King will not be advised to instruct his Governor, to make *such* regulations as *may* secure, to the ships fitted out from Great Britain, the *full* enjoyment of that cod-fishery? Will not this civil establishment make it, to the subjects of Great Britain, more secure than they have found the Port of Boston? Will not regulations, thus enacted by *Law*, be more effectual to this salutary object than any orders given by the governor of Newfoundland; who is cloathed with no legislative power, nor is supported in what he may do, by *any* * *Act* which extends to that coast?

To all these questions common sense answers in favour of the Bill; for the Quebec Government, having *civil* jurisdiction there, will make the British

* The Provisions of the Act of William III. are confined solely to the Island of Newfoundland.

subjects

Subjects *more* secure in the possession of this fishery, *by how much* more security there is to the Mother state, in their being governed by a civil establishment from home, and by laws consented to at home, *than* by a naval establishment, with no laws at all.

It has been urged, that the transfer of the *jurisdiction* of this fishery to Quebec, will be attended with a transfer of the *fishery* itself, from the other North-Americans, to our subjects of Quebec, and to our own people of England. Were it so, I do not see any ill polity in a measure which may mediate tend to draw a fishery from people, who *refuse* our laws, government, and manufactures, to the inhabitants of Quebec, who *petition* us for laws, government, &c. or to ourselves, who stand very much in need of them; especially if it should appear, and it is very true, that this country is occupied by Canadian pos-

feffions, under Canadian rights; heretofore subject to this very jurisdiction, till divested by Proclamation. *Would* the transfer of the government carry the fishery with it, it would operate in favour of the bill; but I think, that it cannot be argued for it, that it will be attended with any such effects; for the Independents of New-England will not find themselves less “perfectly free” under the *civil jurisdiction* of Quebec, than under the *Proclamations* of the *Naval* Governors of Newfoundland.

To what has been, or may be, said against this Bill, on account of the encouragement which it may give to the *Canadian Fishery*, and of the consequent danger of its proving a *Nursery* for *Canadian Sailors*; who, as soon as they shall acquire a *fixed* settlement for their fishery on that coast, are to be supposed willing to *abandon* their property, and fly to the *French Navy*:—
To

To an argument so merely composed of words, I shall think it enough to answer generally—that the *Nursery*, if it is one, is *not originated* by this Act—that it was *preexistent* to it—that it is not to be prevented but by an Act of injustice, that of ousting the Canadians there settled from these their settlements and possessions—that it seems rather * absurd, to *exclude* people from a fishery, in order to *prevent* their leaving it—and, lastly, that this Act, so far from sending them to man the *French Navy*, gives them encouragement to remain there, secure in their possessions, on the footing of *British subjects*. But, however liberal to them as colonists and subjects, the Act is not less cautious of the safety and welfare of the Mother Country; vesting in the Crown a legal controul of this fishery, to limit and confine the bounds thereof, and to make such *regulations* applicable thereto, as shall on

* Hic rogo, non furor est, ne moriari, mori?

behalf of *Great Britain* be deemed expedient. And even if it should, contrary to every probability, prove a nursery for *French*, instead of *English* sailors, and should the Crown omit the exertion of the salutary power by this Act entrusted to it; we are by no means *precluded* from making such further *regulations* and *restrictions* as shall to us seem fit.—

I have entered thus largely into the consideration of this part of the Bill, which, by an extension of the limits of Quebec, includes the coast of *Labrador*; because great pains have been taken to prejudice men's opinions upon false grounds; but I must not forget the other object.—It is needless to inform this house, already so knowing in American affairs, that the *upper* and *interior country*, which this Bill places under the jurisdiction of *Quebec*, is indeed of great extent, intersected by many very great rivers and lakes,
taking

taking their courses in different diverging lines of direction; but of easy communication, by means of narrow straits, or short, carrying-places, which being secured by forts, the dominion is easily maintained by a very small military force. By a complete knowledge and proper use of this great natural advantage, the *French* actually gained, and for many years maintained, the possession of that country; from which, by means of a wise and proper regulation of the *Peltry trade*, upon one general system, they gained the esteem and affection of the Indians, and reaped those benefits which raised *Canada* to the flourishing state we found it in at the conquest.

In order, however, to give effect to that regulation, and that the posts, which were established, might be more easily maintained, and at as little expence as possible; *Settlements* were allowed to be formed, within a cer-

tain district round each post; and a form of civil government established, among the inhabitants of them, proportioned to the extent and importance of their settlements; which became, in process of time, *actual*, though *dependent*, Colonies.

In this situation, *that country* was, by the *success* of our arms, and the *wisdom* of our councils in the direction of them, transferred to the dominion of Great-Britain.—I do not mean, in general, to condemn the policy of the *Proclamation* in 1763, in reference to the interior country: had it been followed by a complete execution of that *plan*, for the government of *Indian affairs*, which the late *Minister* of the *American Department* had, with so much credit to himself, suggested; the present measure would, as to many of its objects, have been unnecessary. The *Peltry trade* would have been secured from these gross abuses and
frauds

frauds which have spread universal enmity and jealousy among the Savages; and the Settlements at *Detroit*, *Poste St. Vincenne*, and the *Illinois*, might, by degrees, have been brought under that controul which is *essential* to public safety, and have received that protection which is *due* to Civil Liberty.

Unfortunately, however, no part of this plan was adopted, except the appointment of a *Superintendant for Indian Affairs*, with an establishment of near 10,000*l. per annum*, but without any power or authority whatever, except what arose out of his uncommon merit and influence, to make any regulation, or correct any of those *abuses*, of which that commerce is in its nature so susceptible. Many of the posts, where inhabitancy had taken place, were improvidently abandoned; and the miserable settlers were left exposed to *tyranny* and *oppression*, which a man, informed

informed of facts, would *blush* to mention.

In vain have the sufferers under that oppression sighed out *bitter*, but *respectful*, complaints. — *In vain* has Sir William Johnson repeatedly announced the *entire* loss of the affections of the Indians, and stated the *decline* of the *Peltry trade*, for want of some regulation and controul. — *In vain* have the Colonies, concerned in this trade, been called upon to concur in some measures for that purpose: they have not only refused that concurrence, but have, regardless of their own *safety*, and in violation of their *Sovereign's* orders, in some instances encouraged, and in others connived at, *vagabond settlements*, independent of all authority, and irreconcilable with every principle of true polity.

In this situation, and under these circumstances, what better can be done
than

than to annex this country to *Quebec*, and subject the whole to the jurisdiction of that Colony, to which the only lawful settlers in it were originally subject, and whose language, manners, inclination, and religion, are the same:—a Colony, that, under the provision of this Bill, will have authority competent to every object that requires regulation and reform, both in respect to *Indian Affairs*, and the care and concern of the *subordinate* districts.

Do gentlemen really think, that, after all that has been proved to this house respecting the *conduct* of our other Colonies, it would be adviseable that each, or any number of them, should *ad libitum* extend settlement west to the *River Mississippi*? I think that none will be found hardy enough to risk such an opinion.——Should it be proposed, I should answer, “No! “certainly, no!” for, besides the inconvenience, as in the instance of *Boston*

for

for example, of its extending back into the woods above nine hundred miles from its Capital, its turbulent and democratic spirit, and, in this instance, its inapplicable system of representation; there would moreover be the same ill consequences attending it, as must have followed that ill-designed, and happily-abortive scheme for the *Ohio* settlement; the forming an independent state, *inaccessible* to our Navy, and consequently *uncontrolable* by ourselves.—It would tend *prematurely* to hasten that independence in our subjects in America, which they are forward enough to claim already.—It would form an *impregnable Headquarters* for the discontented to resort to.

If this reasoning is fairly deduced, I think it will follow, that *none* of the Provinces on the coast are *singly proper*, either by *situation, constitution, or temper*, for so important a trust as the jurisdiction

risdiction of that country. And the impropriety of such a measure will appear by stronger reason, if we add, that the country in contemplation is chiefly held and settled, where held and settled, under *Canadian* rights and *Canadian* establishments.—And the same reasoning will conclude, that an *inland* Colony and settlement there is inexpedient as well as dangerous.

It should be considered that the object of * colonization is not merely to form new towns, which shall call us the Mother country; but to extend our *commerce*, our *resources*, our means of *wealth*—of *Empire*, upon our own terms. If this is not done, our title to America is a *vain name* and nothing more. But particularly, in this remote country, in question, *commerce*, *and trade*, and the *security* derived to the other colonies and to the Empire in general, from its being in our posses-

* L'Esprit des Loix, Liv. xxi. chap. 21.

sion,

tion, are our *only* objects. For this purpose, the establishment thereof should be rather *monarchial*, than *democratic*; in that the direction and controul of a chain of forts, and a distant Indian trade, would be ill-decided upon by a *town-meeting*, an *elective Council*, or an house of *Representatives*; and a country of that immense extent, and wild condition, reduced to a system of representation, would be a monster in *reality*, as well as in *theory*—if the theory could be supported—if its existence could be realized.

But the *strength* of these forts *united* in one hand—*directed* by one head—and *governed* under the proposed *Quebec* establishment, will not only be a proper *barrier* and *controul* against our enemies, and a *protection* to our other Colonies; but it will also form a politic *check** to the growing indepen-

* diem proferet Ilio,
Matronisque Phrygum —

dence

dence of our American children. And, whatever may be said of the *pleasantness of brethren dwelling together in unity*, it is a matter of great * moment to the *political existence* of our Empire, that our Colonies beyond the Atlantic, instead of being combined together under the fraternal name of "*Americans*," should be blended and united with our general Empire under the filial character of "*BRITONS*."

Such disposition of this Back Country will also have another good effect, to restrain and prevent their *back settlements*, where they would be beyond the reach of our *controul*; and will oblige them to cultivate the *sea-coasts*, where, so long as we command the sea, we shall always have a power of *coercion* over them. It will restore the Canadian settlements, to *their own and former jurisdiction*, and it will be a means of recovering and preserving the

* Grand. & Decl. des Romains, chap. vi.

trade of that country, and reconciliating the *minds* of the injured and oppressed Indians.

The honourable gentleman, who spoke last, expresses a high sense of his *esteem* for the noble Lord on the Treasury-bench. I heartily concur with him in it, and trust that I shall not have occasion to alter my opinion. His *candour* and *attention*, in hearing and replying to every the most pitiful objection, that the cry of Party could raise against this Bill, convince me not less of his *patience* than of his *abilities*. This honourable and learned gentleman has also said, Sir, that no one has dared to avow *this Bill*—that it has been *prolem sine matre creatam*. I know not why, unless it be said *quia populi filius, nullius filius*;—because, *concurrently* the production of the two houses, it cannot properly be claimed by, or attributed to, any individual of either. For my own part, if my
claim

claim were supportable, I should make no scruple of *avowing* it; for the mutable fashion of condemning this Bill will, I am persuaded, *change* as much, and as fast, as the *opinions* and *principles* of some of the opposers of it have changed. It is truly said, by Locke, that "Names govern things," and that we generally "*non quo eundem est, sed quo iter;*" and the fate of the *popularity* of this Bill affords a striking instance of the truth of it; where a partial cry *within* and *without* these walls, of *Popery* and *arbitrary Power*, has more operated—has more convinced, than either *Reason* or *Commonsense*.—As to *Popery*, I shall observe that we only grant them that toleration which, as *Christians*, or as *Men*, they are intitled to—as *Subjects*, they may claim, under that very *Treaty*, by which they became our subjects.—With regard to the latter imputation of *Despotism*, I shall conclude with the

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answer

answer of the Athenian Legislator,—

“ WE HAVE NOT GIVEN THEM THE
 “ BEST CONSTITUTION POSSIBLE, BUT
 “ WE HAVE GIVEN THEM THE BEST
 “ THAT THEY ARE CAPABLE OF RE-
 “ CEIVING.”



S. I. N. I. S.

E R R A T A.

P. 16, l. 4. between *bill* and *reflores*, insert the word
"only"

P. 24. l. 2. dele the word "the"

E. R. A. T. A.



